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ABSTRACT

Many parents critical of public education have removed their children from public schools and are schooling them at home. Home schooling has generated a number of lawsuits. Controversies have arisen over the definitions of "school" and of "equivalent instruction," parents' qualifications to teach, and religious exemptions from state compulsory school attendance laws. Parents have focused recent efforts on the political process. Since 1982, 30 states have eased restrictions on home education programs. During the 1992 Indiana legislative session, a bill calling for extensive regulation of home education was dropped without a hearing. In Indiana, the number of registered home schoolers since 1985 has more than tripled: from 519 to 1,713. nationwide, the number of children being educated by home schooling is increasing, and this will likely be accompanied by pressure on state legislatures to deregulate home schooling. State policymakers face difficult decisions in striking the appropriate balance between state and individual interests. (Contains 35 references.) (MLF)

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Home Schooling and the Law

by Martha McCarthy

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Many parents critical of public education have removed their children from public schools and are schooling them at home. This brief examination of the legal activity surrounding home schooling points out that this educational alternative has raised a number of sensitive issues.

States can require children between specified ages to be educated and can impose penalties on parents who disregard this requirement. It was established early in this century that private schooling can satisfy compulsory school attendance laws (*Pierce v. Society of Sisters*, 1925), so parents have some discretion regarding where—but not whether—their children are educated.[1] Substantial legal activity has focused on the states' authority to regulate private alternatives to public education; home schooling has been particularly controversial. These cases raise sensitive issues about the appropriate balance between parental interests in directing the upbringing of children and governmental interests in ensuring an educated citizenry.[2]

Why Has Home Schooling Become Popular?

Parents have given many reasons for removing their children from formal schooling, but the reason cited most often is the asserted conflict between the public school program and parents' religious beliefs (Williams, 1991). The Religious Right has been critical of the public school curriculum, alleging it promotes "secular humanism" (which exalts human nature and disavows God) or "New Age" philosophy (which advances one-world government and religion).[3] Because fundamentalist parents have not been successful in securing judicial backing for their allegations that public school courses, materials, and books are unconstitutionally advancing an antitheistic creed (see

[1] All states have enacted compulsory attendance laws (see Henderson, Golanda, & Lee, 1991). As the U.S. Supreme Court noted in *Prince v. Massachusetts* (1944), "The family itself is not beyond regulation in the public interest . . . the state as parens patriae may restrict the parents' control by requiring school attendance" (p. 166).

[2] This bulletin builds on an article by McCarthy that appeared in *Educational Horizons*, Summer 1991, Vol. 4, No. 4.

[3] These catchall terms have been used by conservative groups to refer to anything that does not promote Christian tenets and a strict interpretation of biblical absolutes. Some of the most well-known conservative parent groups are Jerry Falwell's Liberty Federation (formerly The Moral Majority), Phyllis Schlafly's Eagle Forum, Pat Robertson's National Legal Foundation, Tim LaHaye's American Coalition for Traditional Values, Beverly LaHaye's Concerned Women for America, and Mel and Norma Gabler's Educational Research Analysts.

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McCarthy, 1990), some have opted to educate their children at home.

While most parents who select home schooling do so for religious reasons, other parents withdraw their children from public schools because of dissatisfaction with academic standards. Also, a small number of parents have chosen home education in response to mandatory desegregation plans, and others fear that their children will be exposed to drugs, alcohol, and violence in school settings. A few parents instruct their children at home due to geographic isolation.

What is the appropriate balance between parental and governmental interests?

Accurate estimates of the number of children being educated at home are difficult to obtain. Many parents do not report that their children are not enrolled in school, and it is left to local school authorities to discover the fact. The number of children being educated outside formal school settings, however, does appear to be increasing. Estimates indicate that in the early 1970s about 15,000 children were receiving their schooling at home; by 1991 the number had grown to around 350,000 (Lines, 1987, 1991). These estimates are based on data from state departments of education and suppliers of curricular materials for home education; they may underestimate the actual number of children being instructed at home.

The increasing popularity of home schooling is evident in the growth of commercially available curricular materials for home education. Twenty years ago, only a few organizations were marketing educational programs and materials designed for home schools. While many parents who educate their children at home develop their own materials and curricula, the number of organizations catering to home schoolers has multiplied. In particular, "growth in the distribution of Christian-based curricular packages has been extraordinary" (Lines, 1987, p. 511). Improved media technologies are likely to stimulate this growth.

Judicial Rulings—Nationally

Home schooling has generated a number of lawsuits. In states that require children to attend a public or private school but do not specifically authorize home education, controversies have arisen over the definition of "school." A few courts have interpreted such statutes to preclude home education as a means of satisfying compulsory school attendance (*Burrow v. Arkansas*, 1984; *New Mexico v. Edington*, 1983; *Kansas v. Garber*, 1966).[4] However, most courts have interpreted these laws as authorizing home education programs that meet state standards. For example, a Colorado appeals court concluded that the state compulsory attendance law, requiring children to be enrolled in a "school," could be satisfied by pursuing education at home and periodically reporting to a religious school to be tested (*People in the Interest of D.B.*, 1988; see also *Delconte v. State*, 1985). The supreme courts of Georgia and Wisconsin found compulsory attendance statutes unconstitutionally vague because they required parents to enroll their children in a public or private school but did not define what constitutes a private school (*State v. Popanz*, 1983; *Roemhild v. State*, 1983).

Where states authorize home education, courts have not spoken with a single voice regarding the constitutionality of requirements that such programs be "essentially equivalent" to public school offerings. To illustrate, in 1989 the Second Circuit Court of Appeals rejected a vagueness challenge to the New York requirement that home instruction be provided by competent teachers and be substantially equivalent to public school offerings (*Blackwelder v. Safnauer*, 1989).[5] Similarly, the federal district court in Maine concluded that "equivalent instruction" is capable of objective measurement with a "core meaning that can reasonably be understood" (*Bangor Baptist Church v. Maine*, 1982, p. 1227). An Idaho appeals court held that the state law requiring home schooled children to be "comparably instructed" to those educated in schools was not unconstitutionally vague (*Bayes v. State*, 1989; see also *Mazanec v. North Judson*, 1985[6]). In 1991 a Tennessee appeals court held that the Commissioner of Education was empowered to define "equivalency" for purposes of reviewing requests for exemptions from the state law

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[4] The Arkansas and New Mexico laws subsequently were amended to authorize home education.

[5] While this case was pending, the New York Board of Regents adopted new regulations clarifying that home school programs will be subject to home visits only when placed on probation because their individualized instructional plans have not been approved by local school authorities.

[6] A constitutional challenge to Indiana's compulsory attendance law was rejected where parents were prosecuted for thwarting efforts to verify compliance; the district court's finding that the home education program was essentially equivalent to public school instruction did not entitle the parents to injunctive or monetary relief.

requiring home instructors to have a baccalaureate degree or its equivalent (*Crites v. Smith*, 1991).

In contrast, the Minnesota Supreme Court ruled that the term "essentially equivalent" as used in the compulsory attendance statute (requiring home instructors' qualifications to be essentially equivalent to the minimum standard for public school teachers) was unconstitutionally vague for purposes of imposing criminal liability on parents for noncompliance (*State v. Newstrom*, 1985). A Missouri federal district court similarly found unconstitutionally vague the state requirement that the level of education in home programs must be substantially equivalent to school offerings (*Ellis v. O'Hara*, 1985). Also, Pennsylvania legislation was considered vague and in violation of parents' due process rights because it did not prescribe standards for determining who would be considered a qualified tutor and what would be considered satisfactory curricula (*Jeffrey v. O'Donnell*, 1988).

Parents in South Carolina filed suit to stop the state from enforcing a statute which required parents holding only a high school diploma to pass a basic skills test to be approved for home school teaching (*Lawrence v. South Carolina*, 1991). The South Carolina Supreme Court held that it was not reasonable for the state to require such a test and prohibited its use.

The Supreme Court of Virginia, however, ruled against home schooling parents seeking a religious exemption from the state's compulsory school attendance law; it upheld a lower court's ruling that the parents had failed to show that their beliefs were genuinely religious rather than sociological, philosophical, political, or personal (*Johnson v. Prince William County School Board*, 1991). Neither parent in the case had a college degree, which was required to provide home instruction, so they sought a religious exemption from the requirements. During the trial, the father testified inconsistently. While asserting that only he and his wife should teach their children, the father also stated that certain parts of the children's education could be turned over to others at a later time to cover subjects the parents were not qualified to teach. The court held that the school board was correct in denying the religious exemption under these conditions.

Courts have not spoken with a single voice on the question of equivalency of instruction.

Although the Arkansas Supreme Court in 1984 held that the state compulsory attendance law precluded home education (*Burrow v. State*), the legislature subsequently enacted the Arkansas Home School Act. In 1988 the Eighth Circuit Court of Appeals upheld the Act, which among other things requires students being taught at home to take annual standardized achievement tests and to take minimum performance tests when they reach age 14 (*Murphy v. State*, 1988). A child failing to score within eight months of grade level or higher in specified subjects must be placed in a public, private, or parochial school. Rejecting parents' assertions that the law impairs constitutional rights, the court held that the law served the state's compelling interest in educating its citizens. In an earlier case, the Fourth Circuit Court of Appeals interpreted the North Carolina compulsory attendance law as placing the burden on parents choosing to educate their children at home to prove that the instruction would prepare the children "to be self-sufficient participants in our modern society or enable them to participate intelligently in our political system," which is a "compelling interest of the state" (*Duro v. District*, 1984; see Mawdsley & Permuth, 1984).

In a recent case, a Minnesota appeals court reversed a lower court's ruling that children were in need of protective services as a result of parents' refusal to submit the children to standardized achievement tests in connection with their home education program (*In the Matter of the Welfare*, 1991). The appellate court accepted from the evidence that the parents' religious beliefs were sincerely held. Further, the court, after balancing the parents' constitutional rights with the state's compelling interest in educating its citizens, determined that removing the children from the home was not the least restrictive alternative to promoting the state's interest. The court saw no reason to impose a harsher sanction for failure to take these tests than it would impose for taking the test and failing it. On remand, the trial court was ordered to first exhaust the enforcement provisions of the home education statute before it contemplated removing the children from the home.

Legislative Action—Nationally

Since parents have not usually prevailed in lawsuits challenging the state's authority to regulate home education, they have focused recent efforts on the political process. According to the Home School Legal Defense Association, 30 states since 1982 have changed their laws to ease restrictions on home education programs (Klicka, 1991). Only Michigan still requires home tutors to be certified by the state, and one other state, Arizona, requires home tutors to pass an examination. Teachers' organizations have opposed efforts to deregulate home education and

especially to eliminate certification requirements (see National Education Association, 1984). Despite such opposition, those lobbying for deregulation have had apparent success.

In North Dakota it was reported that the number of students being taught at home doubled in the seven months following the legislature's 1989 action relaxing home education requirements ("Home Schooling," 1989). Under the current law, parents with college degrees can instruct their children at home without supervision by certified teachers provided they follow the state-mandated curriculum. Parents with a high school diploma can teach their children at home if they pass the state teachers' examination or work under the supervision of a certified teacher for one hour per week. All students taught at home in the state must take annual standardized achievement tests.

Since 1982 30 states have eased restrictions on home education programs.

Over half of the states (29) require students educated at home to take standardized tests or to be subjected to alternative state-supervised forms of assessment. The trend seems to be toward assuring accountability by imposing pupil performance standards rather than requiring certification of home tutors.

Judicial Rulings and Legislative Action in Indiana

Interest in home schooling appears to be steadily increasing in Indiana. Since 1985 the number of registered home schoolers in the state has more than tripled (see box). These figures may underestimate the actual number, as some parents may not report that they are schooling their children at home.

Number of Indiana Children Registered in Home Instruction

91-92	1,713
89-90	1,150
87-88	667
85-86	519

Source: Indiana Department of Education, Education Information Systems, 1992.

Indiana has set forth few specific guidelines regarding home schooling. According to Indiana law, school-age children must attend either a public school "or some other school which is taught in the English language" (Ind. Code Ann. §20-8.1-3-17, 1991). Home schools fall under the rubric "some other school."

In 1904 an Indiana appeals court determined that home schools in Indiana are private schools. The court stated, "We do not think that the number of persons, whether one or many, makes a place where instruction is imparted any less or more a school" (*State v. Peterman*, 1904, p. 551). Today, upon registration with the state, a home school is given its own private-school number.

In its most express reference to home schooling, Indiana law states that "it is unlawful for a parent to fail, neglect or refuse to send his child to a public school . . . unless the child is being provided with instruction equivalent to that given in the public schools" (Ind. Code Ann. §20-8.1-3-34, 1991). Where a local school superintendent believes that a child being educated at home is not receiving equivalent instruction, it is his or her duty to execute affidavits against the child's parents (Ind. Code Ann., 1991). If the prosecuting attorney files and prosecutes the action, the courts must then determine if the child is receiving equivalent instruction.

While other state courts have struck down similar statutes for vagueness, it does not appear likely that Indiana's home schooling law will suffer the same fate. In 1985 the Seventh Circuit Court of Appeals stated that Indiana's home schooling law would not be held unconstitutional merely because of the "equivalent instruction" clause (*Mazanec v. North Judson*, 1985). On remand, the district court declined to address the constitutionality of that clause (*Mazanec v. North Judson*, 1986).

Under Indiana law, children schooled at home are required to receive instruction for the same number of days each year as their peers do in conventional schools; further, the instruction they receive must be equivalent to that received by public school children (Ind. Code Ann., 1984). The state requests that children being educated at home be registered with the state attendance officer at the Indiana Department of Education and with the superintendent of the local school corporation. Parents are expected to keep attendance records of their home schooled children and to provide the state superintendent of public instruction a list by grade level of the children they are teaching (Ind. Code Ann., 1991).

Since 1985 the number of registered home schoolers in Indiana has more than tripled.

Despite the state's guidelines for accountability in home education, it is impossible to know how many children remain unregistered. Although registration is strongly encouraged, mechanisms for enforcement are limited. Another factor curbing close monitoring of home schooling activities may be the desire

on the part of some public school authorities to develop cooperative relationships with home schooling parents because "adversarial relationships only hurt the children" (Nettles, 1991).

During the 1992 Indiana legislative session, a bill calling for extensive regulation of home education was dropped without a hearing. Under that legislation, home schooling would have been regulated much more closely to ensure its equivalency to public school instruction. Among its many requirements, the bill stipulated that a licensed teacher must monitor the progress of each student schooled at home. The bill also required parents to submit to the State Board of Education attendance records, a complete outline of each course taught, and a list of textbooks used. The bill further required parents to indicate if they were licensed teachers, to specify the average number of hours of instruction per day, and to provide the total number of days of instruction per school year. The proposed law also called for the State Board of Education to adopt tests to be administered to home school students to assess their proficiency in core subjects such as English and mathematics.

If the bill had been enacted into law, it would have required as much, if not more, regulation of home schools than of public schools. The quick termination of this bill may demonstrate the legislature's lack of interest in such extensive regulation of home schooling. Indiana continues to have few specific guidelines regarding the regulation of home education.

Conclusion

The number of children being educated outside of public or private schools seems likely to increase, and this will likely be accompanied by pressure on state legislatures to deregulate home schooling. Several states are considering voucher proposals that would provide public funds for children to attend private schools; the status of home education in relation to such plans has not been clarified. State policymakers face difficult decisions in striking the appropriate balance between state and individual interests. Where should the line be drawn to accommodate parents directing the upbringing of their children without jeopardizing the state's efforts to ensure an educated citizenry? States have the legal authority to regulate home schooling, but continued debate over the exercise of this authority seems assured.

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Selected Organizations Concerned with Home Schooling

National Organizations

Holt Associates, Inc.
2269 Massachusetts Avenue
Cambridge, MA 02140
(617) 864-3100

Home School Legal Defense Association
P.O. Box 159
Paeonian Springs, VA 22129
(703) 882-3838

The Moore Foundation
Box 1
Camas, WA 98607
(206) 835-2736

National Homeschool Association
P.O. Box 290
Hartland, MI 48353
(313) 632-5208

Indiana Organizations

Fort Wayne Area Home Schools
P.O. Box 12954
Fort Wayne, IN 46866
(219) 482-2059

Greater Lafayette Home Educators
1815 Sagamore Parkway North
Lafayette, IN 47904
(317) 448-4988

Indiana Association of Home Educators
P.O. Box 17135
Indianapolis, IN 46217
(317) 865-3013

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